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SUPREME COURT OF THE UNITED STATES.

No. 139.

THE NEW YORK AND VIRGINIA STEAMSHIP COMPANY, OWNERS OF THE STEAMER ROANOKE, APP'TS,

vs.

EZRA CALDERWOOD AND AL., LIB'TS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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UNITED STATES OF AMERICA,
Southern District of New York, } ss.

I, John W. Nelson, clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

[SEAL.]

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

JOHN W. NELSON,
Clerk.

UNITED STATES OF AMERICA,
Southern District of New York. } ss.

I, Geo. W. Morton, clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

[L S.]

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, this sixth day of November, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the said United States the seventy-ninth.

GEO. W. MORTON,
Clerk.

At a stated term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on Saturday, the sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty-three:

Present, the Honorable Samuel R. Betts, an Associate Justice of the Supreme Court of the United States—

EZRA CALDERWOOD and others
vs.
The STEAMSHIP ROANOKE, her tackle, &c., }

(1853, Jan'y 10,) the libellants file their libel in the words and figures following, to wit:

[REC. CXXXIX., D. T., 1855.]—1

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UNITED STATES OF AMERICA,
Southern District of New York, } ss.

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In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this fourth day of December, in the year of our Lord one thousand eight hundred and fifty-five, and of the independence of the United States the eightieth.

JOHN W. NELSON,
Clerk.

UNITED STATES OF AMERICA,
Southern District of New York. } ss.

I, Geo. W. Morton, clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the writings annexed to [L S.] this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the city of New York, in the Southern District of New York, this sixth day of November, in the year of our Lord one thousand eight hundred and fifty-four, and of the independence of the said United States the seventy-ninth.

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Clerk.

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Present, the Honorable Samuel R. Betts, an Associate Justice of the Supreme Court of the United States—

EZRA CALDERWOOD and others
vs.
The STEAMSHIP ROANOKE, her tackle, &c., }

(1853, Jan'y 10,) the libellants file their libel in the words and figures following, to wit:

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York:

The libel and complaint of Ezra Calderwood, Thomas C. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, and Seth Cooper, owners of the schooner "Sprightling Sea," against the steamship "Roanoke," her engine, tackle, apparel, and furniture, in a cause of collision, civil and maritime, alleges—

First. That this is an action founded upon a maritime fact. That the said steamship is now within the Southern District of New York, and that the libellants now are, and were at the time hereinafter mentioned, the owners of the schooner Sprightling Sea.

Second. That on the evening of the 17th day of October, A. D. 1852, the said schooner was bound up the Elizabeth river, towards Norfolk, in the State of Virginia; that the wind was blowing a four-knot breeze, and there were flying clouds and stars, and it was not so dark but that objects could be seen at a considerable distance and a vessel could be safely run. That the schooner, at about half-past ten o'clock of the said evening, was proceeding up the said river, close-hauled on the starboard tack and to the eastern side of the channel, and was going at the rate of about four knots an hour, when the said steamer Roanoke, bound down the said river, carelessly and negligently run into and afoul of the said schooner with great force, striking her near her starboard cathead, and causing her to sink in a very short time, to the great damages of the libellants.

Third. That at and previous to the said collision the said schooner was well manned and equipped, and had careful look-outs stationed on her deck; and when the approach of the steamer was observed, a lantern was swung, and every possible effort made by hails to cause the said steamer to keep off and away from the said schooner, notwithstanding which the speed of the steamer was unchecked, and she so navigated as to cause the collision above ment'd.

Fourth. That when so run foul of, and for some time previous, the said schooner was close-hauled, so running that it would have been dangereus to go closer to the shoals on the east shore, and to go to west would have thrown her more in the way of the steamer; and she was accordingly kept upon her course without any change whatever, there being nothing that she could do to avoid the collision except to swing a lantern and hail, which was done.

Fifth. That said collision was occasioned by no fault of those on board of the schooner, but by the sole fault of those on board and in charge of the steamer, and that, among other things, she was without any proper look-out, and was out of her proper course, and did not slow and stop her speed in time to avoid the schooner, and did not keep to windward of the schooner and pass her on that side at a proper distance, as there [was] abundant room for her to have done.

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Sixth. That, by reason of the sinking of said schooner as aforesaid, libellants have sustained damage to the amount of seven thousand dollars or thereabouts, which damage the said steamer is bound to pay.

Seventh. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, the libellants pray that process in due form of law may issue ag'st the said steamer Roanoke, her engine, machinery, tackle, apparel, and furniture, and that all persons claiming any right or interest in the same may be cited to appear and answer upon oath as to all and singular the matters herein above alleged, and that the said steamer, her engine, tackle, &c., may be condemned and sold to pay the damage aforesaid, with costs, and that the libellants may have such other and further relief as in law and justice they may be entitled to receive.

(Signed) JOHN F. WHITE,
Ag't for Libellant.
C. L. BENEDICT,
Proctor.
E. C. BENEDICT,
Adv.

SOUTHERN DISTRICT OF NEW YORK, *ss.*

On this 10th day of January, 1853, personally appeared before me John T. White, of said district, who being duly sworn, did depose that he is the agent of the libellants above mentioned, who are absent from this district, and that the matters in this libel contained, are true to the best of his knowledge, information, and belief.

(Signed) CHAS. ELIOT SCOVILLE,
U. S. Comm'r.

Endorsed: U. S. District Court, 10,351. Ezra Calderwood & al. vs. the steamer Roanoke, her tackle, &c. Libel.
C. L. BENEDICT,
Proct.

Filed Jan'y 8, 1853.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York:

Filed the day of 185 .

Stipulation for libellants' costs entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed in this Court, on the eighth day of

January, in the year of our Lord one thousand eight hundred and fifty-three, by Ezra Calderwood and others against the steamship Roanoke, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamship, her tackle, &c., may be condemned and sold to pay the demands of the libellant, and the said *libellant* and John F. White, and F. B. Farwell, *sureties*, *parties* hereto, hereby consenting and agreeing, that in case of default or contumacy on the part of the *libellant* or *sureties*, execution may issue against their goods, chattels, and lands, for the sum of two *hundred* and fifty *dollars:*

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the *stipulators* undersigned shall be and each of them is bound in the sum of two *hundred* and fifty *dollars*, conditioned that the *libellants* above named, shall appear and answer to the cause and to interrogatories, and shall pay all such costs as shall be awarded against them by this Court, or, in case of appeal, by the Appellate Court.

J. F. WHITE,
Ag't for Libl't.
F. B. FARWELL,
J. J. WHITE.

Taken and acknowledged this 8th day of January, 1853, before me,

JOSEPH BRIDGHAM,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss:

John F. White and F. B. Farwell, *part* to the above stipulation, being duly doth *depose* and *say*, and each for himself saith, that he is worth the sum of five *hundred dollars* over and above all his just debts and liabilities.

J. F. WHITE,
F. B. FARWELL.

Sworn to this 8th day of January, 1853, before me,

JOSEPH BRIDGHAM,
U. S. Commissioner.

Recorded the day of 185 .

SOUTHERN DISTRICT OF NEW YORK, ss:

The President of the United States of America, to the Marshal of the Southern District of New York, greeting:

Whereas a libel hath been filed in the District Court of the United States for the Southern District of New York, on the tenth

day of January, in the year of our Lord one thousand eight hundred and fifty-three, by Ezra Calderwood et al., against the steamer Roanoke, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited, in general and special, to answer the premises, and all proceedings being had, that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant:

You are therefore hereby commanded to attach the said steamer or vessel, her tackle, &c., and to detain the same in your custody, until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said Court, to be held in and for the Southern District of New York, on the 25th day of January, at eleven o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness, the Honorable Samuel R. Betts, Judge of the said Court, at the city of New York, in the Southern District of New York, this tenth day of January, in the year of our Lord one thousand eight hundred and fifty-three, and of our independence the seventy-seventh.

GEO. W. MORTON,
Clerk.

C. L. BENEDICT,
Proctor for Libellant.

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SOUTHERN DISTRICT OF NEW YORK,
United States District Court:

EZRA CALDERWOOD et al.
vs.
The STEAMER ROANOKE,
her tackle, &c.

Monition ret'ble Jan'y 25th, 1853.

C. L. BENEDICT,
Proctor for Libellant.

I hereby depute Wm. B. Walsh, to execute the within process. Dated 10 Jan., '53.

H. F. TALLMADGE,
U. S. Marshal.

(Steamer at foot of 9th st., North river.)

In obedience to the within monition, I attached the ship Roanoke therein described on the 10th day of January, 1853, and have given due notice to all persons claiming the same that this Court will, on the 25th day of January inst., (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interpose l for the same.

H. F. TALLMADGE,
U. S. Marshal.

Dated 25th January, 1853.

U. S. DISTRICT COURT.

EZRA CALDERWOOD et al.
vs.
The SHIP ROANOKE, her tackle, &c. } 10,351.

I hereby consent that the above vessel be discharged from custody on the claimants' executing stipulations for costs and value, the latter in the sum of eight thousand dollars, the stipulations to be signed by the New York and Virginia Steamship Company, and Ed'd M. Greenaway, and the surety to justify before the commissioner, and the claimants' paying into Court the costs of the clerk and marshal to the time of stipulating, the vessel to remain subject to the lien.

Dated January 11th, 1853.

C. A. BENEDICT,
Proctor for the Libellant.

We consent to the above stipulation, and to appear and answer on return of the process, otherwise default to be entered.

HENRY E. DAVIES,
Proctor for Claim't.

Endorsed: 10,351, U. S. District Court, Ezra Calderwood et al. vs. the Steamship Roanoke, her tackle, &c., Kent and Davies, Proct'rs for Claim'ts. Consent to stipulate.
Filed Jan'y 11, 1853.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City

Hall, in the city of New York, on Tuesday, the eleventh day of January, in the year of our Lord one thousand eight hundred and fifty-three:

Present, the Honorable Nathan K. Hall, District Judge—

EZRA CALDERWOOD et al.
vs.
The STEAMSHIP ROANOKE, her tackle, &c., } 10,351,

On filing consent to stipulate, signed by the proctor for the libellants, and the terms being complied with, on motion of Henry E. Davies, proctor for the claimants, it is ordered that the appearance of the claimants be entered and the vessel discharged from custody.

(Respondent's costs.)

DISTRICT COURT OF THE UNITED STATES,
Southern District of New York.

Filed 11th day of January, 1853.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed in this Court, on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-three, by Ezra Calderwood et al., against the steamer Roanoke, her tackle, &c., for the reasons and causes in the said libel mentioned, and praying that the said steamer, her tackle, &c., might be condemned and sold, to pay the demands of the libellant, and the parties hereto hereby consenting, that in case of default or contumacy on the part of the claimants or their sureties, execution for the sum of two hundred and fifty dollars may issue against their goods, chattels, and lands:

And whereas, also, a claim is about to be filed in said cause by Henry Ludlam, agent of the New York & Virginia Steamship Company:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be and are hereby bound in the sum of two hundred and fifty dollars, conditioned that the claimants above named shall pay all costs and expenses which shall be awarded against them by the final decree of this Court, or, upon an appeal, by the Appellate Court.

THE NEW YORK & VIRG'A
STEAMSHIP COMPANY.
By EDW'D M. GREENWAY,
Pres't.

EDW'D M. GREENWAY.

Taken and acknowledged, this 11th day of January, 1853, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss:

Edward M. Greenway, *part* to the above stipulation, being duly sworn, *deposes* and *says*, that he resides in the city of New York; that he is worth the sum of five *hundred dollars*, over and above all his just debts and liabilities.

EDW'D M. GREENWAY.

Sworn to, this 16th day of January, 1853, before me,

GEO. W. MORTON,
U. S. Commissioner.

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

In Admiralty.

Filed the 11th day of January, 1853.

Stipulation entered into pursuant to the rules and practice of this Court.

Whereas a libel was filed, on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-three, by Ezra Calderwood et al., against the steamer Roanoke, her tackle, &c., for the reasons and causes in the said libel mentioned; and whereas the said steamer, her tackle, &c., is in the custody of the marshal under the process issued in pursuance of the prayer of said libel, and by a consent signed by the proctor for the libellants, it has been agreed to discharge the said vessel from custody on the claimants' executing stipulations for costs and value, the latter in the sum of eight thousand dollars, as appears from said consent now on file in said Court; and the parties hereto hereby consenting and agreeing, that in case of default or contumacy on the part of the claimants or their *sureties*, execution for the above amount may issue against their goods, chattels, and lands:

Now, therefore, the condition of this stipulation is such, that if the *stipulator* undersigned shall at any time, upon the interlocutory or final order or decree of the said District Court, or of any Appellate Court to which the above-named suit may proceed, and upon notice of such order or decree to Henry E. Davis *esquire, proctor* for the *claimant* of said steamer, &c., abide by and pay the money awarded by the final decree rendered by the Court, or the

Appellate Court if any appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

THE NEW YORK & VIRG'A
STEAMSHIP COMPANY.
By EDW'D M. GREENWAY, *Pres't.*
EDW'D M. GREENWAY.

Taken and acknowledged, this 11th day of January, 1853, before me,

GEO. W. MORTON,
U. S. Commissioner.

SOUTHERN DISTRICT OF NEW YORK, ss.

Edward M. Greenway, party to the above stipulation, being duly sworn, deposes and says, that he resides in the city of New York, that he is worth the sum of sixteen thousand dollars, over and above all his just debts and liabilities.

EDW'D M. GREENWAY.

Sworn to, this 11th day of January, 185 , before me,
GEO. W. MORTON,
U. S. Commissioner.

Sworn the 11th day of January, 1853.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the twenty-fifth day of January, in the year of our Lord one thousand eight hundred and fifty-three:

Present, the Honorable S. R. Betts, District Judge—

EZRA CALDERWOOD & o'rs
vs.
The STEAMSHIP ROANOKE, her tackle, &c., } 10,351,

The marshal having returned on the monition issued issued in this cause, that he had attached the steamship Roanoke, her tackle, &c., and had not published notice, on motion of H. E. Davis, proctor for the claimants, it is ordered the claimants' appearance be entered, and that they have ten days to file and perfect their answer.

On motion of C. L. Benedict, proctor for the libellants, ordered default nisi and reference.

[REC. CXXXIX., D. T., 1855.]—2

U. S. DISTRICT COURT,
For the Southern District of New York.

EZRA CALDERWOOD et al.
vs.
The STEAMSHIP ROANOKE.

To the Honorable Samuel R. Betts, Judge of the District Court for the Southern District of New York:

The New York & Virginia Steamship Company, by Mr. Edward M. Greenway, their President, having due authority to make the claim on behalf of the owners *owners* of the steamship Roanoke, her engine, tackle, apparel, and furniture, interven'g in their behalf, appear before this Honorable Court, and claim the steamship Roanoke, her engines, tackle, apparel, and furniture, and say that they are the true, lawful, and bona fide owners of the steamer Roanoke, her engine, tackle, apparel, and furniture, and that no other person is the owner thereof.

Wherefore, these claimants pray that this Honorable Court will decree a restitution of said steamship, her engine, tackle, apparel, and furniture, and they may be dismissed with their proper costs andt hat charges in this behalf incured, and otherwise right and justice administered in the premises.

(Signed) EDW'D M. GREENWAY, *Pres't.*

Sworn before me, this 21st day of Febr'y, 1853,
(Signed) GEO. W. MORTON, *U. S. Comm'r.*

Endorsed: 10,351. U. S. District Court. Ezra Calderwood et al. vs. the steamship Roanoke, &c. Claim.

H. E. DAVIES,
Proctor for the Claim't.
WILLIAM KENT,
Advocate of Counsel.

Filed Feb'y 21, 1853.

(1853, Feb'y 21.)

The respondents file their answer in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of New York.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States, within and for the Southern District of New York.

EZRA CALDERWOOD, Thomas C. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, Seth Cooper, owners of the schooner Sprightling Sea,
against
THE STEAMSHIP ROANOKE, her engine, tackle, apparel, and furniture, in a case of collision.

The answer of the New York and Virginia Steamship Company, claimants and owners of the aforesaid steamer Roanoke, to the libel and the claims and allegations of the libellants above named, by Edward M. Greenway, president of said company, alleges and articulately propounds as follows:

First. That the claimants have no knowledge of the facts alleged in the first article of the libel, as to the ownership of said schooner, except what is conveyed by said allegation, and they do not admit the same to be true, but leave the libellants to make proof thereof.

Second. That in like manner and for the reasons last mentioned, these claimants do not admit that the schooner sunk by reason of damage suffered, as is in the second article of the libel alleged, and they deny in like manner that the libellants suffered damage to the amount mentioned in the sixth article of the libel, and that they suffered damage to any amount whatever for which the claimants are liable.

Third. That at the time of said collision it was not so light as in the second article of the libel stated, and that it was very dark, and there was a thick mist and occasional rain.

Fourth. That with respect to other allegations in the second and fourth and fifth articles in said libel the claimants allege, that they do not admit, but on information and belief deny, that at the time of the said collision, the schooner Sprightling Sea was nearer to the eastern side of the channel, and that she was on her starboard tack and close-hauled, and that the steamer negligently and carelessly ran into or afoul of said schooner; and they say that they have no sufficient information to form a belief whether the schooner was well manned and equipped at the time of the collision; and they deny that said schooner had careful look-outs stationed, and that any person on her swung any lantern, and that the schooner took reasonable precaution to prevent the collision aforesaid, as in the third and fourth articles of the libel alleged.

And they deny that it would have thrown the schooner more in the way of the steamer had she gone further to the west to avoid the collision; and they deny that she kept on her course as is in the

fourth article alleged; and they deny that the steamer was without any proper look-outs, or was out of her course, or neglected to slacken her speed; and they say they had good and sufficient reason for not *prassing* the schooner to the windward, which are hereinafter stated.

Fifth. That the collision mentioned in the libel took place and happened as stated in the articles hereof following.

That while the steamer Roanoke, on the evening of the 17th of October, 1852, the same being dark and rainy, was on her regular trip on Elizabeth river, bound from Norfolk, Virginia, to Richmond, about 10 o'clock at night, with three lights of different colours exposed in conspicuous positions above her decks, as the law requires, which could be seen for several miles distant, and in all respects duly and fully manned and equipped, with three persons on the look-out, and moving under a partial head of steam and with great precaution, at a speed of no more than six miles per hour, and nearer the eastern edge of the channel of said river, the persons standing on the bows of said steamer saw a light at some distance over the larboard bow of the steamer, which these claimants say they believe to have been a light on said schooner.

Sixth. That upon seeing said light the man at the wheel was ordered, with a view to avoid all danger of collision, to change the course of the steamer towards the eastern side of the channel, which was promptly done, and her course so changed. That this left the schooner with a free wind to pursue her course along the western shore, which she might have safely done. That very soon after the course of the steamer was changed, (which changed course she continued to pursue,) the light of the schooner disappeared, and was not again exposed, so that it could be seen from the steamer, until the vessels were approached so nearly as to render a collision almost inevitable.

Seventh. That when said light was next so exposed on the schooner as to be visible to those on the steamer, (and in the meantime the schooner, by reason of the darkness of the night, could not be seen from the steamer,) it then appeared that the schooner, instead of pursuing her course nearer the westerly side of the channel, she had carelessly, negligently, and unskilfully changed her course toward the easterly side of the channel, thereby greatly increasing the difficulty of avoiding a collision.

Eighth. That immediately upon seeing the light on said schooner so for a second time exposed, showing her wrongful approach to the steamer, the speed of the steamer was checked as soon as possible, her wheels were reversed, and all possible efforts were made to avoid a collision, and before the same took place the speed of the steamer was very much slackened.

Ninth. That the schooner struck the steamer on her larboard bow, and the steamer's stern was pushed around towards her starboard side by the collision. That the schooner, if she had not

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changed her course, would have avoided the collision, as she might and ought to have done.

That the collision was without any fault or negligence on the par of the steamer or those on board of her, and was solely caused and produced by the negligence, carelessness, and unskilfulness of those on board of the schooner, and by reason of said schooner having no proper and sufficient lights or watch at or before such collision.

Tenth. That at the time of and before the happening of said collision, the steamer was in all respects, so far as her speed and course and direction are concerned, under the exclusive management and control of a regularly and duly authorized branch pilot; and the claimants insist, that by reason thereof they are not liable for any damages which the schooner may have suffered by reason of such collision.

Eleventh. That the person making oath hereunto, being the president of the company, the claimants herein, was not present at the time of the collision, and is not acquainted with the facts before stated of his own knowledge; that he has made full and careful inquiry relative to the facts herein stated, and believes the same to be true.

And the claimants therefore pray, that they may be dismissed hence, with their reasonable costs and damages in this behalf wrongfully sustained.

EDW. M. GREENWAY,
Pres't.
HENRY E. DAVIES,
Proctor.
WILLIAM KENT,
Advocate of Counsel.

Subscribed and sworn to this 21st day of Feb'y, 1853, before me,

GEO. W. MORTON,
U. S. Com'r.

Endorsed: 10,351. United States of America, Southern District of New York. Ezra Calderwood, Thomas C. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, Seth Cooper, owners of the schooner Sprightling Sea, against the Steamship Roanoke, her engine, tackle, apparel, and furniture, in a case of collision. Answer.

Filed February 21st, 1853.

To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York:

The replication of Ezra Calderwood, Thomas E. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, and Seth Cooper, libellants, to the answer of the New York and Virginia

Steamship Company, defendants, alleges that they, the said libellants, will *aver*, maintain, and prove their libel to be true, certain, and sufficient, and that the said answer of the said defendants is uncertain, untrue, and insufficient, and they humbly pray as in and by their said libel they have already *payed*.

C. L. BENEDICT,
Libel'ts Proctor.

Endorsed: 10,351, U. S. District Court. Ezra Calderwood, et al, vs. the Steamship Roanoke, *her* tackle &c. Replication.

C. L. BENEDICT, *Proctor.*
E. C. BENEDICT, *Advocate.*

Filed February 22d, 1853.

U. S. DISTRICT COURT.

Wednesday June 29, 1853.

DEXTER CARLETON and others
vs.
THE STEAMSHIP ROANOKE, N. Y., and VIRGINIA STEAM SHIP CO. claimants.

C. L. BENEDICT,
for Lib.
E. D. BENEDICT,
of Counsel.

EZRA CALDERWOOD, et al.
vs.
The same, same claimants.

DANIEL BOWLEY,
for Cl'ts.
H. E. DAVIES,
of Counsel.

(1853, June 29th.)

These causes being called in their order on the *calendar*, ordered that they be heard together.

Pleadings read.

Evidence for libellants.

Seth Cooper, (sworn for first cause only,) master of schooner Sprightling Sea, owned by libellants, went into Elizabeth River about 8 p. m., October 17, 1852, bound to Norfolk, James H. Robinson mate, William Payson, James Young, George R. Toole,

crew and cook, James Young, Payson, and Toole, were on look-out forward; Young had been *stationed* forward on look-out; witness was at wheel; wind *south*, and sch'r was by the wind close-hauled; at Lambert's Point the river turns eastwardly, and then course was about *S. E.* by *E;* was not steering by compass, but by the land; schooner was about middle of river on starboard tack with all sail up except gaff-top-sail, about 4 knots speed; went up on east side of channel on that tack; did not go further west than middle of river; that tack laid his course *about* along shoals on E. side up in 3 fathoms water, 25 or 30 yards off the shoals; passed a schooner at anchor on his starboard side; took her to be on westward side of river; she had a light up; thinks it about ¾ of a mile from shore to shore; not enough acquainted with *g* to state width of channel; first saw Roanoke off *Town Point*; discovered her light; sch'r did not change her course; but cook brought out a light from house and held it up on the starboard side by breast hook forward; mate ordered him to do it; he held it up in his hand to the moment of collision; he also halloed steamer to keep off or she would be into sch'r; called out in a loud voice; steamer came directly into sch'r; sch'r kept close-hauled, steering S. E. by E. till to leeward of fort; steamer struck schooner on starboard bow about by cathead and stove bow in; did not injure the bowsprit; the schooner sunk and has *not* seen her since; the blow slewed the sch'r round some head to eastward, sunk in 10 minutes or less; steamer appeared to be going ahead; her wheels were in motion, and she was coming on to sch'r; steamer was heading towards eastern shore, and nearly across the sch.; schooner on E. side of channel; 3 fathoms water; supposed it to be on E. edge of channel; river runs about *N. W. and S. E.* at that place; 4 of his crew got into a boat; Young got on to the steamer when *she* struck; after striking, the two vessels came aside of each other as sch. slewed round; steamer had all residue of channel for room to pass sch'r.

Cross-examined.

Is one of the owners of the schooner, and has a suit for the collision against steamer; was in the river 20 to 25 years ago, and once before this trip, this same season, about a month before the collision; went up to Norfolk; his mate was his pilot; not a licensed pilot of Virginia; did not see any pilot at mouth of river; no one applied to pilot him up; supposes steamer 2 miles off when he first saw her lights; perhaps more; carried no lights suspended upon sch'r; ½ or ¾ of a mile from him down the river when cook held up the light; did not change his course after he first saw steamer; has not said he did, to his knowledge; talked with Mr. Parish, (capt. of steamer) about the collision; came to N. Y. in Roanoke, 2 or 3 trips after the collision; no recollection of telling him sch'r was over near W. shore, and changed her course and went

over to E. side after he saw steamer; nor saying that he did not consider either vessel in fault, or saying anything to him about it. Capt. Parish and Elliott spoke to witness on the subject, not the man now in Court called Capt. Parish; mate sailed a trip before this one with him; sch. at anchor was ½ to ¾ of a mile below where sch. sunk; had no sails up.

Thursday, June 30, continued.

Cross-examination, continued.

The schooner he saw anchored on W. shore he should think was a little above or nearly opposite Lambert's Point, (Lambert's Point about 2 miles from Norfolk;) about a month previously made the voyage to Norfolk, from Portland Maine; on first voyage thinks he entered Capes in the morning, and reached Norfolk at 1 or 2 p. m., and left to go down the river between 3 and 5 p. m., about 30 miles from Capes to Norfolk.

Re-direct.

Vessel was raised and she and cargo and rigging sold for $2,200, about, but was sold as she lay on bottom; did not see her after she was raised.

James H. Robinson (sworn) was mate of sch'r; this was his 2d voyage; was on deck when she entered the river, and continued there until collision; tacked before seeing steamer; did not afterwards; cannot tell how steamer bore from sch'r; wit. had no light in *binnacle*, and could not take her course; in his judgment she was about *S. S. E.* from sch., bound down the river; cannot say whether steamer changed her course; might be 10 minutes after first saw her to the collision; sch. did not change her course after he saw steamer; her sails were close hauled, jammed by the wind, and they remained so; thinks she was working 4 knots, exclusive of tide; *that* was flood, and running probably about 2 knots; wit. stood on weather-quarter, close by the man at the wheel, and was throwing lead; Young, Payson, and steward, were forward; Young stationed on look-out; passed one vessel at anchor on W. side of river; very little W. of Lambert's Point; shoal W. side of river; she had a light up; passed on E. side of her; no orders given for a light on sch'r till he *saw* steamer; then asked steward if his lantern was in order to light; and about time steamer got below Hospital Pt., ordered steward to light lamp, and take it forward; he did so, and stood on breast-hook forward, and held it up; there was then room enough for steamer to go to W. of sch'r several hundred yards; whole main channel from 3 fathoms water west; thinks steamer was *under* a good head of steam; she struck sch'r near cat-head, between that and flukes of starboard anchor, nearly stern on; saw her strike; she made a good hole; stove in whole starboard bow, from cat-head to fore-rigging; did not injure stern or bowsprit, or jib-boom; saw sch. after she was got up; flying jib-boom and part of

bowsprit were out of water after she sunk, and appeared in good order; she sunk in a short time, probably in 5 to 8 minutes; the blow changed *her* head round more to east; thinks she did not go ahead after struck, and sunk within a very short distance from spot; heard no hail from steamer; steward and wit. hailed steamer to keep off; cannot tell whether she could have then avoided them, by steering off or stopping; witness hailed more than once as loud as he could halloo.

Blow seemed to have cut in 8 feet on deck, and as far in below water; probably 3 feet below the water-line; did not measure, but estimates distance; saw wound after sch. was raised; witness got aboard steamer by the rigging, and when vessels swung together, witness came down main rigging, and got back to sch.; found the forecastle deck under water then; witness then got in schooner's boat with Capt. Payson and steward. Young was on board steamer; *small* boat went alongside steamer; she backed off away from sch'r; thinks the officer found one or more hole in her bow.

Witness is acquainted with the channel; has sailed over it a number of times; coasted off and on these 12 years; no pilot offered; no one spoke her, or was in sight; capt. of sch. had a pilot license for Virginia; *found* it in vessel after she sunk, and gave it to Capt. Cooper.

Capt. Cooper (again) rec'd the paper from mate, but does not know where it is, nor how long since he saw it; never looked for it. (Ruled, cannot give secondary evidence of its contents.)

Cross-examined.

Was in same vessel in her previous voyage with Capt. Cooper, and about 3 months previous to that, from Capes to Norfolk, and back, up and down in day time; been in the habit of going into the river about twice a year; never been a licensed pilot; cannot say whether he saw 3 colored lights on steamer; never met her before in night time; she just opened up by Tower Point when he first saw her; thinks about 2 miles off; did not watch her lights all the time, as he was casting lead; capt. was steering by his orders, most by compass and by the wind; judges wind was about south.

Defence.

William Parish, (sworn.) Pilot by profession; licensed by Virginia for 20 years, and for that time has been in habit of navigating the Elizabeth river, from Capes to Norfolk; the diagram produced is a correct drawing of the various places and points. Channel from Lambert's P't and Fort Norfolk about ½ a mile wide, for vessels drawing 10 feet water; about 3 trips after collision, was engaged as 1st officer and pilot of Roanoke, her capt. being sick; she runs weekly between N. Y. and Richmond; well acquainted with place where sch. sunk; saw her there on bottom;

she was out of ship-channel, and right on edge of shoals on eastern side; she could not have gone a length, certainly not exceeding two, without running ashore on the shoals, on the course she was heading as she sunk.

The usage is to keep middle of channel, when he can see his course, and if he feels his way by soundings, he takes the eastern side. Capt. Cooper was a passenger in Roanoke the time witness first came in her; Capt. Elliott and Parish also on board; when coming down this channel, witness had conversation with Capt. Cooper; he said he commanded sch. at time of collision; the night was rather dark, and raining and wind to southward. She was beating up; she had crossed the westward, and tacked, and was laying his course up, when he first saw the steamer; when he saw her lights, he said he thought it best to run off to leeward, and give him the west, and kept off to eastward, to give him all the room he could on west side; witness told him capt. of sailing vessel ought always to hold their own course, and then steamers could take care of them; wit. asked which was the blame? He said he guessed both were trying to do best they could, and their striking was an accident; witness is not in employment of claimants; sails steamer between N. Y. and Baltimore.

Cross-examined.

Did not think any person heard the conversation; it was about 3 weeks after the collision.

Capt. Joseph M. Brough, (sworn.) Resides at Norfolk; is a branch pilot of Virginia, since 1825; well acquainted with river from Norfolk to Capes; prepared diagram in Court, and it is essentially correct; was on steamer, and had charge of her at time of collision, and had full control of her till she arrived at Richmond. Left Norfolk about 10 p. m., a very dark, rainy night; 2½ miles to Langley shoals; steamer running very slow, not exceeding 5 or 6 knots; wind *S. S. W.* Passed a sch. at Fort Nelson, going up river on western side of them, laying her course up, and thinks, with a point and a half free; did not take direction of wind by looking at compass, but could determine course of wind by seeing course of sailing vessel.

Mate of vessel was on look-out forward; 2 other persons; steamer had all three of her lights displayed; colored lights on wheel-houses, but cannot tell which colors in the respective wheel-house. Discovered a light on larboard side 4 or 5 minutes before collision, but it disappeared, and saw one on sch. when steamer was right on sch., and it disappeared, as if dropped in water; seemed to be held in a man's hand by the mast when the light was thrown overboard; sch. was heading east; should judge her course was changed, for she was not on the wind, and thinks her head lay after she sunk as it was when she was struck; if she had kept her course *S. E.* she could have avoided collision; judges that capt. became

frightened, and attempted to cross the bows of steamer; steamer stopped and backed, and, but for that, sch. would have run into her against broadside, and ported helm a little so as to fall off half a point; steamer was running as close to the eastern shore as she could safely run at time. If sch. had succeeded in passing steamer's bows at that place, she must have gone aground; only 3 fathoms water alongside of shoals; shoals are nearly dry; 2½ feet water, with abrupt edges.

Not possible for steamer to avoid collision after light was shown by a man on sch.; time so short that a man could not have counted 15. Instantly gave order to stop steamer, and to back her, before striking, and to port wheel; went in and saw by compass ship had fallen off half a point; this was after collision.

Was steering *N. W.* before collision. Steamer was on east side; course up channel is *S. E.* Did not hear a hail from sch. before collision.

Cross-examined.

Judges vessel was going up *free* at Fort Nelson from course of wind; she was on west side of river; steamer in middle of channel—there 500 yards wide; saw her just as passing her, 20 or 30 yards off; don't know that he passed a powder-boat that time; in star-light night clear weather does not use compass, otherwise does, when he can see the shore; i. e., goes by compass and by lead; first light he saw was about 1½ point on larboard bow of steamer; did not see the man holding light, but judges it in a man's hand, because too low to be in rigging, and after it disappeared, saw a man there; it was between fore and main rigging.

Re-direct.

Not generally case that coasting vessels go in the river by night with a lead; channel is difficult, and not usual for vessels to go through it without a branch pilot.

Capt. Samuel C. Elliott, (sworn.) Commanded Roanoke 17 Oct., 1852; mariner since 1825; has run Elizabeth river 10 or 12 y's; understands river as well as anybody not a branch pilot; was on steamer night of collision; ship was under command of pilot Capt. Brough; collision 2 to 2½ miles from Norfolk; witness stood on west side of pilot-house; night very dark and rainy; 5 or 6 minutes before collision saw a light on larboard bow about 15 or 17 degrees from a right line across the river; supposed it to be a vessel at anchor, but light disappeared; next time he saw it, it was nearly under bow of steamer; saw light drop; it disappeared, and saw the man who afterwards told wit. he dropped it overboard; it merely flushed up; disappeared almost instantly—say 10 seconds; pilot gave no directions till light dropped; witness had station close by signal bells; when pilot ordered "stop her," and in the same breath "back her," wit. instantly rung both bells; thinks

wheels made about 2 revolutions back before striking; thinks steamer was as near E. shore as was prudent to go; usual course there for steamers is *N. W.;* sch'r was on her starboard tack, heading about east when struck; her true course on that wind was S. E.; i. e., if she had been further *west* in river; hardly thinks S. E. would have brought her up from that place; thinks she must have from 3 to 4 points falling off from being close-hauled, as he supposes the wind to have been; if sch. tacked in middle of river and kept a S. E. course, does not believe she would come within 100 yards of steamer; steamer was running as slow as possible, without working by head—about 5 or 6 knots; judges her headway was checked about ½ by ringing of bells; thinks sch. must have run on the flats in twice her length from position she lay in where sunk; supposes collision was caused by sch. keeping off her course; witness was on the look-out all the way from Norfolk; Capt. Brough is considered one of the best pilots in port; red light on starboard, blue on larboard wheel, pale light aloft; upper light would generally be seen 10 miles—the others 4 or 5; not misty that night; pilot-house is on hurricane deck—23 feet from water, 3 feet aft of fore-mast.

The mate was on forecastle on the look-out; that was his station; saw a man there, but could not distinguish person that night.

Cross-examined.

Pilot-house about 30 feet from stern of ship; ship's papers were in his name as master, under three several trips as master; witness commanded her about 2 months, during sickness of Capt. Parish; not now in employment of claimants.

For Libellant.

William H. Payson, (sworn.) Was on sch. at time before the mast; is 16 ys. old; been 18 months at sea; was on deck at starboard fore-rigging; when there, after tacking, could see land on both sides of river; not very dark; passed another vessel at anchor under west shore; went probably 50 yards from her; saw her hull; did not see steamer before tacking; sails trimmed on the wind flat, and were not changed before collision; kept right of steamer; saw man carry light from forecastle, and carried it forward, and *stood* up on breast work with it; it was globe lantern; should think 5 or 6 minutes before collision saw steamer's bowsprit over rail and sch., and then run; did not see her strike; witness started before man who held the light; blow (shock) knocked witness down; heard man who held up the light hail steamer to keep away, thinks three times; that was after he showed the light; called out loud; did not observe mate; was engaged looking at steamer; Young was on look-out; wit. was by side of him, looking at steamer; schr. held her course after tacking; heard no hail from steamer; did not see any person

on her bows; Young is out on a fishing voyage on Banks; went off some time in the spring.

Cross-examined.

First saw lights of steamer should think 10 to 12 minutes before collision; might be more; did not see hull of steamer till 10 y'ds, perhaps more, off; saw her 3 lights 5 or 6 minutes after he first seen steamer till lantern was lighted by Poole; saw him bring it out; did not see him light it; perhaps steamer 50 y'ds or more off when Poole hailed her; sch. did not vary her course; judged so by course of steamer; not frightened till steamer got close to sch'r; sch'r did not change her course he thinks; noticed her sails—they kept smooth full; was forward of main-sail, abreast of fore-mast and fore-rigging; his attention was directed to steamer; recollects he looked up forward, and saw jib and flying-jib drawing; did not see east shore at time of striking; saw it soon after tacking; did not notice it after; rained about 8 o'clock; don't recollect its raining after ½ past 8; had been on deck from ½ past 7.

Re-direct.

Did not rain at time of collision; saw land on west when sch. tacked; supposes 15 minutes before collision.

George R. Poole, (sworn,) cook and steward, (colored man.) Was on deck by forecastle when sch. tacked last time; saw steamer 15 minutes after; sch. was on wind; sails trimmed aft close; did not see any change of them till collision; stood where he could see them; they kept full, so far as he could see them; did not notice the shore; witness hailed steamer to keep off; was then standing on breast-hook with a light; mate ordered him to get the light, and carry it forward, and stand on breast-hook, and hold it up as high as he could, that they could see it; continued to hold the light guesses ½ of an hour; as steamer struck, witness was knocked over, and light fell out of his hands; don't know where it went to.

Defence.

Capt. Elliot (again) thinks an instant before striking he heard a hail or noise of some kind from the sch'r; did not see either shore that night at place of collision.

John Hewson, (deposition,) (wheelsman,) read. See folio 124, Carleton vs. Roanoke.

George B. Sloat, (deposition,) 1st assistant engineer, read. See folio 144, Carleton vs. Roanoke.

For Libellants.

William D. Reynolds (deposition) read. See folio 212, at end of Carleton vs. Roanoke.

Friday, July 1st, (continued.)

Capt. Lewis Parish, (sworn.) Was capt. of Roanoke in 1852, and ever since she was built; was not on board at collision; was on board 3d trip after saw Wm. Parish and Capt. Cooper in conversation; they were moving about near where witness was sitting; heard Capt. Cooper say he had just tacked to windward of channel, and was laying his course up the river, and said his vessel was heading *S. E.;* Wm. Parish asked him why he did not keep his course? He replied, he thought that by putting his helm up and running to leeward he should best clear her by going to leeward and under her bow; he used both expressions, "to leeward and under the bow of ship," and he said he supposed "his keeping away fetched him in contact."

Cross-examined.

The conversation was on starboard side of promenade-deck near the wheel-house; they were walking about and occasionally stopping; witness was sitting on rail and listening to the conversation; witness knew Capt. Cooper, but he did not know witness; does not know that he heard all that was said; don't know whether the two continued their conversation when out of his hearing.

Mr. Davies argues for the claimants.
Mr. Benedict " " " libellants.
Cur. advisare vult.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Saturday, the sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty-three:

Present: The Honorable Samuel R. Betts, District Judge—

EZRA CALDERWOOD et al.
vs.
The STEAMSHIP ROANOKE, her tackle, etc.,

This case having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the Court, that the libellant recover in this action against the steamship Roanoke, her tackle, &c., the damages sustained by the collision in the pleadings mentioned, and that the said steamship, her tackle, &c., be condemned therefor. And it is further ordered, that it be referred to a commissioner to ascertain the amount of the damages aforesaid, and to report thereon to this Court with all convenient speed.

U. S. DISTRICT COURT.

EZRA CALDERWOOD et al. vs. The STEAMER ROANOKE. } 10,350.

C. L. BENEDICT.

H. E. DAVIES.

1854, Aug. 26. The proctors for the libellants and claimants being present, the libellant proceeds with the reference, and offers in evidence 4 depositions taken de bene esse.

Adjourned until Wednesday, Aug. 28th, at 10 a. m.

Sept'r 29, 1854.

Dep't E. D. Crockett read. $6,500.

Robert McLaughlin. 6,500. An average freight 18 or 19 cents; there were 900 casks.

Cross.

Never examined her to make an estimate of her value.

Joshua Emerson, dep't. Costs to build, $7,000.

Cross ex'd.

Don't know the materials of which she was built; never examined her.

Wm. D. Raynold's deposition. $5,600; vessel sold for $2,200; $1,220 net proceeds; Cooper was the captain and part owner, and one of the lib.

Nathaniel Nash. Value $5,000; would have built 5,500.

Sam'l C. Elliott. Cooper s'd costs 5,500; can be built for less in Maine.

CALDERWOOD vs. STEAMER ROANOKE. }

I consent that the com'r to whom this matter was referred do add to the amount reported by him as the value of the vessel the sum of $200.

October 10th, 1854.

HENRY E. DAVIES,
Proctor for Claimant.

Endorsed: 10,351. U. S. District Court. Ezra Calderwood vs. the Steamship Roanoke. C. L. Benedict, p. lib. Testimony—in reference.

Filed Sept'r 29th, 1854.

U. S. DISTRICT COURT.

EZRA CALDERWOOD et al.
vs.
The STEAMSHIP ROANOKE,
etc., etc.

Elisha D. Crockett, being duly examined as a witness for the libellants upon the reference, says: I am a ship-master, and reside in Rockland, Maine. I have been to sea fourteen years; I am acquainted with vessels and their value; I have owned them, and bought them, and sold them; I knew the schooner Sprightling Sea; she was built in Vinal Haven, Maine; was 125 tons burthen; she was lost her first trip, I believe, and could not have been more than two months old; she was worth sixty-five hundred dollars, I should think.

Cross-examined.

I have purchased vessels of this class; I own part of a schooner now; I know who built the Sprightling Sea; his name was Bartlett; I don't know what she cost. I do not know the libellant, Mr. Carleton. I saw her in April last, in Boston, after she had been repaired; I saw her before the collision, in Rockland, before she sailed on her first trip; I do not know to what extent she was injured, or what amount was expended on her.

I was told the vessel I saw in Boston in April was the same vessel I saw in Rockland.

ELIJAH D. CROCKETT.

Sworn to before me this 22d June, 1854.

W. J. MUMFORD,
Com'r of Deeds.

We consent that the above deposition be read on the part of the libellant upon the reference hereon, with like effect as if the witness was examined before the *commission*.

HENRY E. DAVIES,
Proctor for Claimants.

Endorsed: 10,351. U. S. District Court. Ezra Calderwood et al. vs. the S. S. *Roaknoke*, her tackle, etc. Testimony of *Elijha* D. Crockett, for libellants.

C. L. BENEDICT,
Proctor.

U. S. DISTRICT COURT.

EZRA CALDERWOOD et al.
vs.
The STEAMSHIP ROANOKE,
etc.

SOUTHERN DISTRICT OF NEW YORK, ss.

Robert McLaughlin, being duly sworn, says: I reside in Camden, Maine; I there have been a ship-carpenter for three or four years, and for the last three years have been engaged building light-houses. I am some acquainted with ships and their value. I know the schooner Sprightling Sea. I saw her in October before she made the last trip she made, while she was loading in Maine. I have been on board of her. I think I know her well enough to give a pretty good idea of her value; she was between five and six months old; she was bran new when she came to Camden, at Rockport. I should consider that vessel worth at the time she was lost six thousand five hundred dollars. For freight of lime from Rockport to Norfolk they have been paid from twelve one-half cents to twenty-five cents per cask. I call 18 or 19 cents an average freight.

Cross-examined.

The vessel was built at North Haven, Maine. I do not know what the owners paid for her. I never heard the owners say what they paid for her. I know Seth Cooper; he was one of the owners of her, and master at the time she was lost. My estimate of her value is from seeing her at the time she was sailing, and my knowledge of vessels; the value of the vessel and her tackle as she lay, as I estimated, was six thousand five hundred dollars. I did not at that time examine her with reference to making an opinion as to her value, nor have I ever made an examination of her for that purpose. I do not know the cost of the vessel. Thomas C. Bartlett, of Camden, Maine, built her. I consider the vessel worth just as much when lost as when she was launched, if not a little more.

ROBERT McLAUGHLIN.

Sworn to before me, on this 25th Aug., 1853,
CHAS. ELIOT SERVILLE,
Com'r of Deeds.

We consent that this deposition be taken and read as testimony before the commission on the reference.

HENRY E. DAVIES,
Proctor of Claimants.

UNITED STATES OF AMERICA,
Eastern District of Virginia,
City of Norfolk, State of Virginia, ss :

Be it remembered, that on this nineteenth day of August, in the year of our Lord one thousand eight hundred and fifty-four:

I, Jno. T. Francis, a commissioner duly appointed by the Circuit Court of the United States for the Eastern District of Virginia, in the Fourth Circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States,'" passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, did call and cause to be and personally appear before me, at my office, on Bank street, in the city of Norfolk, in the said Eastern District of Virginia, in the State aforesaid, Joshua Emerson and Wm. D. Reynolds, to testify and the truth to say, on the part and behalf of the libellants, in a certain suit or matter of controversy now depending and undetermined in the District Court of the United States for the Southern District of New York, wherein Ezra Calderwood et al. are libellants and the owners and claimants of the steamship Roanoke are respondents.

And the said Joshua Emerson, being about the age of forty years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said Joshua Emerson, and he did thereupon depose, testify, and say as follows, viz :

Joshua Emerson, of Camden, in Maine, one of the witnesses named in the caption hereof, being forty years of age, has been a sailor for twenty-seven years, and has been master of schooners and brigs for the last ten years, and is now master of the schooner Statesman, now lying in this port. I know of the schooner "Sprightling Sea," which was run down by the steamer Roanoke; I have seen her; I am well acquainted with such a craft as the "Sprightling Sea;" I have had good opportunity of knowing the value of such schooners in the course of my life. She would have cost to build seven thousand dollars, in my best judgment. I was concerned in a schooner some 7 or 8 tons larger, that cost $7,000, and she was built cheaper than what the Sprightling Sea could be built for, I judge.

Cross-examined by W. W. Sharp, esq., proctor for claimants.

Int. Where was the schooner Sprightling Sea built, and when?

Ans. She was in Northhaven, in Maine; I believe in 1852.

Int. Of what materials was she built?

Ans. That I cannot tell; I never saw her on the stocks.

Int. Who were the master mechanics that built her, and what were their names?

Ans. I can't tell you; I don't know who built her.

Int. When were you on board of her?

Ans. I was on board of her only once, in Norfolk last summer; I think it was in August; she was laying at the ship-yard.

C. Int. How long did you remain on board of her?

Ans. About two minutes.

C. Int. Did you make any examination of her?

Ans. I did not; I only went to enquire for Capt. Nickerson, and found he was gone, so I left.

C. Int. Did you ever make any examination of her at any other time?

Ans. No, I never did.

Re-examined.

Int. How far is Northhaven from Camden?

Ans. I should judge about 10 miles; they build schooners in both places.

Int. Of what materials are schooners like the Sprightling Sea ordinarily built there?

Ans. They are built of maple, beech, juniper, and hard pine.

Int. From the examination and inspection you did make of her, could you form a correct judgment of her value?

Ans. I should judge $7,000 the cost of vessels of her class; from my inspection of her, I consider that a correct estimate.

JOSHUA EMERSON.

William D. Reynolds, another witness named in the caption hereof, being produced, deposeth as follows:

Int. What is your age, and occupation, and residence?

Ans. I am about 23 years of age, and am a commission merchant in Norfolk, and reside in Norfolk.

Int. What was your occupation in October and November, 1852?

Ans. I was clerk for H. N. William, a commission merchant in Norfolk.

Int. Do you know the Schooner Sprightling Sea?

Ans. I saw her when sunk in October, 1852, and several times since.

Int. To whom was she consigned when she was coming in and was sunk?

Ans. To H. N. Williams, who is since dead.

Int. Were any attempts made to raise the schooner; and if so, by whose authority, and under whose direction?

Ans. Men and means were employed to raise her by order of the

captain, Seth Cooper, by Mr. Williams, who acted as ship's husband, and made the disbursements for such expenses.

Int. Were the men and means successful in raising her; if not, what was done with her?

Ans. After trying several days, their efforts were ineffectual; a survey was called, and she was sold.

Int. What was the amount of the disbursements made by Mr. Williams for the expenses on such attempt to raise her and sale, and including his own commissions?

Ans. The disbursements and commissions on the disbursements of vessel and furniture and sale amounted to $990 and some odd dollars.

Int. To whom was the balance in the hands of Mr. Williams, after paying the disbursements and commissions, remitted?

Ans. A bank-check on Boston, for a sum between $1,210$\frac{00}{100}$ and $1,220$\frac{10}{100}$, was given to the captain, which was the net proceeds of the sale of the vessel.

Int. Look on the papers now produced, marked A No. 1 to 10, inclusive, and No. 12, and say whether those are the bills of disbursements made on the occasion of raising the Sprightling Sea and sale in part.

Ans. They are; those bills were all paid by Mr. Williams; these, a bill of $1 85 for staves, and telegraph despatches $18 17, and Mr. Williams' commissions, are all the disbursements, I believe; Mr. Williams' commissions amounted to about $78.

Int. Were these charges in the bills for labor and services and for commissions, including Mr. Williams', fair and reasonable charges for the same at that time?

Ans. They were.

Cross-examined.

C. Int. Was Seth Cooper (one of the pl'ffs in this action) the master of the schooner before, at, and after the time she was sunk by her collision with the Roanoke?

Ans. He was until she was sold.

C. Int. Did not the said Capt. Cooper, in a conversation with you or in your presence, state the value of the schooner Sprightling Sea before the collision to be $5,000 or $5,500?

Ans. I have had the impression that the cost of the schooner was about $5,600, and I think I got this impression from what the captain said to me—I mean Capt. Cooper.

2\frac{50}{100}$.

W. D. REYNOLDS.

Depositions of Nathaniel Nash and Samuel C. Elliott, taken before me on behalf of the respondents at the same time and place with foregoing depositions, by consent of parties.

Nathaniel Nash, being sworn, deposeth as follows:

Int. State your age and occupation?

Ans. I am about 40 years of age, and am a master shipwright in the city of Norfolk.

Int. How long have you been engaged in the business of building and repairing vessels?

Ans. I have been engaged in it ever since I was 16 years of age, and for the last 12 years as master.

Int. Have you not been more largely engaged in this business for several years past than any other shipwright in this city?

Ans. Yes, sir.

Int. Did you know the schooner Sprightling Sea during the fall of 1852, before and after her collision with the steamer Roanoke?

Ans. I knew the Sprightling Sea after the collision but not before; I was called on a survey of her.

Int. Had you a fair opportunity to judge of her value?

Ans. I had; I examined her after she was raised.

Int. What, in your opinion, was the value or cost of that schooner before she was sunk?

Ans. I think her value was about $5,000.

Int. Would you have engaged to build a vessel equal to her in all respects, supposing her to have been built in 1852, for the sum of $5,000?

Ans. I would have built a vessel like her, using the same material and building her as she was built, for $5,000 in this port.

Cross-examined by the proctor for libellants.

C. Int. Are you *acquitted* the cost of building and equipping vessels in Northhaven, Maine?

Ans. Not from experiment there; I have never seen them built in Maine, and have never been there.

Int. Would not the position of the schooner, when you first saw her after she was sunk, tend to depreciate her value in your estimation?

Ans. It would depreciate her value then, but it would not prevent my estimating her value.

Int. What would you build a vessel of that class for at that time, using your own wood in this port?

Ans. I would have built one for $5,500.

Re-examined.

Int. Is it not an established fact that vessels can be built cheaper in the State of Maine, with the materials of that country, than they can be built here with the materials of our country?

Ans. It is.

N. NASH.

Samuel C. Elliott, produced, deposeth as follows:

Int. What is your age, residence, and occupation?

Ans. I am about 40 years of age; I reside in New York, and am a shipmaster.

Int. Were you acquainted with Captain Cooper, one of the plaintiffs in this suit, and master of the Sprightling Sea, about the time she was sunk by the Roanoke?

Ans. I was not acquainted with him at the time she was sunk, but made his acquaintance soon after.

Int. Had you any conversation with Capt. Cooper in regard to said schooner? if you, what was it?

Ans. I had a conversation with Capt. Cooper, in which I asked him how much the schooner cost; to the best of my recollection, he told me $5,500, ready for sea.

Int. What *in* your understanding as shipmaster of the terms ready for sea?

Ans. It includes the building and fitting out the vessel for the intended voyage, including her stores, &c.

Int. Of what State are you a native?

Ans. I am a native of the State of Maine.

Int. Is the cost of building vessels in Maine and in this port greater or less *how then* there.

Ans. It is much less there; they can take timber from here and then build them for less.

$1 60.

S. C. ELLIOTT.

Sch'r Sprightling Sea, Capt. Cooper, owners and underwriters, to Philip Palmer:

For 47 days' work pr. riggers, a 1 75 p. d'y	$82	25
" 63¾ " " laborers, a 1 12½	71	72
" Use of blocks and falls	20	
" 11 days' services of myself, a $2 p. d'y	22	
" Amount paid for boat *hir*	2	
" " " drayage on rigging and sails	1	75
	$199	72

Norfolk, Nov. 1, 1852.
Rec'd payment of H. N. Williams.

PHILIP PALMER.

Schooner Sprightling Sea, owners and underwriters, to A. Briggs:

For charter of schooner Anna, to assist in raising said vessel, from Oct. 27th to Oct'r 30th, 4 days, at $12 per day	$48

For 36 meals for extra hands employed on board..... 4 50

$52 50

Norfolk, Nov'r 1st, 1852.
Received payment of H. N. Williams.

A. BRIGGS.

Correct.
[Duplicate.] SETH COOPER.

Schooner Sprightling Sea to schooner Henrietta:

To ten days' charter, pr. Oct. 18 to 28.....	$100
" 108 meals, 12½c.....	13 50
" 10 days' board 3 men, 37½c. each.....	11 25
	$124 75

Norfo., Oct'r 29, 1852.
Schooner Sprightling Sea, owners and underwriters, to James Lawrence:

For charter of schooner J. Norcom, jr., to assist in raising said schooner, from Oct. 19 to Oct. 30, 12 days, a $12 p. d.....	$144
For 143 meals for extra hands employed on board, (12).....	17 88
	$161 88

Norfolk, Nov'r 1st, 1852.
Rec'd payment of N. H. Williams.

JAS. LAWRENCE.

Correct.
[Duplicate.] SETH COOPER.

Schooner Sprightling Sea to Nath'l Nash:

1852. To 2 spruce masts, ea. 60 feet long 20 in diameter, a 30 c., 3,600.....	$72
To 1 pitch pine 60 log. 22 dia. 3½ c.....	46 20
" 1 do 60 " 16 " 2½ c.....	24
" 2 8-in. spruce spars.....35 c.....	5 60
" 9 7-in. do do .....30 c.....	18 90
" 3,927 feet timber taken away;	
Less 2,339 " returned.	
1589, a 2½c.....	29 72
	206 42

Credit—By 4 broken spars, a 5 00..... 20

186 42

Norfolk, Nov. 2, 1852.
Received payment of H. N. Williams.
[Duplicate.] N. NASH.

2 November, 1852.

Schooner Sprightling Sea, bo't of Doyle & Irwin—

Use of 3 chains 2 weeks..... $15

The Sprightling Sea, Captain Cooper, to Dr. Robertson:

1852, Oct. 18.	To attending a survey on said sch'r, without the harbor and near to Lambert's Point.....	$10
" 29.	Do do a reconsideration of the aforesaid, and ordering sale of sch'r.....	5
		$15

Received payment of H. N. Williams.
[Duplicate.] DR. ROBERTSON.

Schooner Sprightling Sea, Capt. Cooper, to Jacob Vickery:

1852, Oct. 18.	To attending a survey of said schooner without the harbor, and near to Lambert Point.....	$10
Oct. 29.	Attending a reconsideration of the aforesaid survey, and ordering sale of said schooner.....	5
		$15

Received payment of Mr. H. N. Williams.
JACOB VICKERY.

Schooner *Sprightly* Sea to Nathaniel Nash:

1852, Oct. 18.	To attending survey on said sch'r without the harbor and near Lambert P't.....	$10
" 29.	To a reconsideration of said survey, and ordering sale of said vessel.....	5
		$15

Received payment of N. H. Williams.
[Duplicate.] N. NASH.

Schooner Sprightling Sea owners and underwriters, to Seth Cooper:

To wages of self, from Oct. 7 to Nov. 3, (including board,) 17 days, a $3 p. day	$51
" wages of J. H. Robinson, from Oct. 7 to Oct. 28th, 21 days, a $25 p. month	17 50
Wages of James Young, from Oct. 7 to Oct. 28, 21 days, $17 p. month	11 90
Wages of W. Payson, from Oct. 7 to Oct. 28, 21 days, a $15 p. month	10 50
Wages of G. R. Pool, from Oct. 7 to Oct. 28, 21 days, a $15 p. month	10 50
	$101 40

Norfolk, November.
Received payment of H. N. Williams.

Sch. Sprightling Sea to Rich'd Gatewood, jr., not. pub.

To noting protest	$1
" Extending do	5
" Recording survey	83
" Certifying same	2 50
	$9 33

Received payment of H. N. Williams.
R. GATEWOOD, JR.,
Not. Pub.
Pr. E. R. S. RIMUR.
Norfolk, Nov'r 2d, 1852.

[Duplicate.]

UNITED STATES OF AMERICA,
Eastern District of Virginia, ss:

I, Jno. J. Francis, a commissioner duly appointed by the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed February 20th, 1812, and the act of Congress entitled "An

act in addition to an act entitled an act for the more convenient taking of affidavits and bail in civil causes depending in the Courts of the United States," passed March 1st, 1817, and the act entitled "An act to establish the Judicial Courts of the United States," passed September 24th, 1789, do hereby certify, that the reason for taking the foregoing *deposition* is, and the fact is, the *witnesses* material and necessary in the cause in the caption of the said deposition named, and that they reside more than one hundred miles from the place of trial and reference of said cause.

I further certify, that the notification of the time and place of taking the said *deposition* signed by me was made out and served on the agents of the respondents in this city to be present at the taking of the said *depositions*, and to put interrogatories if he or they might think fit.

I further certify, that on the nineteenth day of August, in the year of our Lord one thousand eight hundred and *fifty*-four, I was attended by proctors for both parties, and by the *witnesses*, who were of sound mind and lawful age, and the *witnesses* by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the *depositions* by me reduced to writing in the presence of the *witnesses* and from their *statements*, and after carefully reading the same to the *witnesses*, subscribed the same in my presence. I have retained the said *deposition* in my possession for the purpose of transmitting the same to the Judge of the United States Court for the Southern District of New York, by mail.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said *depositions* and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this 19th day of August, in the year of our Lord one thousand eight hundred and *fifty*-four, and of the independence of the United States the *seventy-nine*.

JNO. J. FRANCIS,
U. S. Com'r Cir. Court of the U. S., East. Dist. of V'g.
[L. S.]

DISTRICT COURT OF THE UNITED STATES,
For the Southern District of New York.

EZRA CALDERWOOD et al.
vs.
The STEAMER ROANOKE, her tackle, etc.

Commissioner's report.

In pursuance of a decretal order made in the above-entitled

cause, on the sixteenth day of July, in the year of our Lord one thousand eight hundred and fifty-three, by which, among other things, it was referred to the undersigned, one of the commissioners of this Court, to ascertain and compute the amount due the libellant for damages sustained by the collision in the pleadings mentioned, and to report thereon to this Court with all convenient speed:

I, George W. Morton, the commissioner to whom the matter was referred, do report, that I have been attended by the proctor for the libellant and for the claimant, and have taken and examined the testimony offered in support of the libellant's claim for damages above mentioned, and do find that there is due to the libellant for the value of the vessel at the time of the collision, after deducting

the amount for which the vessel sold.....	$4,442
" " added to the value above by Court	200
The value of the freight.....	162
Interest on the above amounts, from (Oct. 17, 1852.)...	672 56
	$5,476 56

The sum of five thousand four hundred and seventy six dollars $\frac{56}{100}$.

Dated the thirtieth day of September, A. D. 1854.

All which is respectfully submitted,

GEO. W. MORTON,
U. S. Commissioner.

BENEDICT SCOVILLE & BENEDICT,
Proctor for Libellant.

At a stated term of the District Court of the United States of America for the Southern District of New York, held at the City Hall, in the city of New York, on Tuesday, the tenth day of October, in the year of our Lord one thousand eight hundred and fifty-four:

Present, the honorable Sam'l R. Betts, District Judge—

EZRA CALDERWOOD et al.
vs.
The STEAMSHIP ROANOKE, her tackle, etc.,

On reading and filing the report of G. W. Morton, United States Commissioner, to whom the above matter was referred, by which there is reported due libellant for damages by the collision in the pleadings named the sum of five thousand four hundred seventy-six $\frac{56}{100}$ dollars, on motion of C. L. Benedict, proctor for the libellant, it is ordered, that the report be in all things confirmed, and that the libellant recover in this action against the said vessel the amount reported due, together with their costs to be taxed, and that the said vessel, her tackle, etc., be condemned therefor.

And, on like motion, it is further ordered that out of the proceeds of the stipulation of the claimants, when paid into the registry

of the Court, the clerk of this Court pay to the libellants or their proctor the amount reported due, together with his taxed costs.

And, on like motion of C. L. Benedict, proctor for the libellant, it is further ordered, that unless an appeal be taken to this decree within the time limited and prescribed by the rules and practice of this Court, that on payment into the registry of the Court the amount of the claimants' stipulations executed on discharging the vessel from custody, the clerk distribute the proceeds in satisfaction of this decree.

UNITED STATES CIRCUIT COURT.

The NEW YORK AND VIRGINIA STEAMSHIP COMPANY, owners of the STEAMSHIP ROANOKE, appellants,
ads.
EZRA CALDERWOOD et al., libellants.

Southern District of New York.

James C. Carter, being duly sworn, deposes and says, that on the 19th day of October, 1854, he served a copy of the appeal in this cause, annexed hereto, upon C. L. Benedict, esq., proctor for the libellants therein, personally, by delivering to the said proctor the said copy at the office of said proctor, in the city of New York, and leaving the same with him.

JAMES C. CARTER.

Sworn to before me, this 19th day of Oct'r, 1854,
GEO. W. MORTON,
U. S. Comm'r.

IN THE CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York.

The NEW YORK AND VIRGINIA STEAMSHIP COMPANY, owners of the STEAMSHIP ROANOKE, appellants,
ads.
EZRA CALDERWOOD, THOMAS C. BARTLETT, DEXTER CARLETON, JOSHUA NORWOOD, PHILANDER CARLETON, ENOS COOPER, and SETH COOPER, libellants.

To the honorable the Circuit Court of the United States for the Southern District of York, in the Second Circuit:

The appeal of the above-named appellants respectfully show-

eth: that on or about the tenth day of January, in the year one thousand eight hundred and fifty-three, the above-named libellants exhibited their libel in the District Court of the United States for the Southern District of New York, against the steamship Roanoke, her engine, tackle, etc., in a cause of collision, civil and maritime, claiming more than fifty dollars, and praying, for the reasons set forth in the said libel, that the said steamship, her engine, tackle, etc., might be condemned and sold to pay the damages in said libel alleged to have been suffered by said libellants.

That process having issued out of said Court on said libel, against the said steamship, her engine, tackle, etc., and the said steamship having been arrested and served by virtue of the said process, the New York and Virginia Steamship Company, the appellants as aforesaid, did, on or about the twenty-first day of February, in the year aforesaid, file their claim to the said steamship, her engine, tackle, etc., and their answer to the said libel, praying in their said answer, for the reasons therein set forth, that the said libel might be dismissed with costs to the said appellants, as by reference to the said libel, claim, and answer will more fully appear. That the said cause came on to be tried before the honorable Samuel R. Betts, Judge of the said District Court, on or about the thirtieth day of June, and the first day of July, in the year aforesaid, upon the depositions and proofs taken in the said cause, and the testimony and proofs adduced by the respective parties, and the said Judge having advised thereon, on the sixteenth day of July, in the year aforesaid, made a decree in said cause, whereby it was among other things decreed that the libellants in said cause should recover against the said steamship, her tackle, etc., the damages in the said libel alleged to have sustained by the said libellants, and that the said steamship, her tackle, etc., be condemned therefor; and by the said decree it was further ordered that it should be referred to a commissioner to ascertain and compute the amount of said damages, and to report thereon to the said District Court, as by a reference to said decree will more fully appear; under which decree a reference was had to the clerk of that Court, who reported that there was due to the said libellants for their damages by the collision mentioned in the pleadings in said cause the sum of five thousand four hundred and seventy-six dollars and fifty-six cents, which report was, on the tenth day of October, in the year 1854, confirmed by the said Court by the final decree thereof.

And the said appellants are advised and insist that the said decrees are erroneous, inasmuch as the said libellants are not entitled to recover any damages whatever against the said steamship in the premises; and these appellants, for these and other reasons, appeal from the whole of the said decree in favor of the said libellants to the next circuit to be held in the said district, and on the said appeal they intend to have the said cause heard anew in the Circuit Court, on the pleadings and proofs in the District Court, and on

other proofs to be introduced into the said Circuit Court; and they pray that the record and proceedings in the said cause may be returned to the said Circuit Court, and that the said decree and every part thereof may be reversed with costs, or such other decree thereupon made as to the said Circuit Court may seem just, and that the appellees may be condemned to these appellants their costs and charges in the premises.

Dated Oct. 19th, 1854.

HENRY E. DAVIES,
Proctor for Appellants.

Endorsed: 10,351. U. S. Circuit Court, vol. , page . The New York and Virginia Steamship Company, owners of the Steamship Roanoke, appellants, ads. Ezra Calderwood et al., respondents. Appeal. H. E. Davies, proctor for appellants. Filed Oct. 19th, 1854.

OF THE UNITED STATES OF AMERICA,
For the Southern District of New York,
in the Second Circuit.

Bond for costs.

THE STEAMSHIP ROANOKE, her tackle, &c., the NEW YORK and VIRGINIA STEAMSHIP COMPANY, claimants and appellants,
vs.
EZRA CALDERWOOD and others, libellants and appellants.

Know all men by these presents, that we, Henry Ludlam and Edward M. Greenway, are held and firmly bound unto the above-named libellants and appellees in the sum of six thousand dollars, to be paid to the said libellants; for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-four.

Whereas the above-named claimants have prosecuted an appeal to the District Court of the United States for the Southern District of New York, Second Circuit, to reverse the decree rendered in the above-entitled suit by the Judge of the District Court of the United States for the Southern District of New York: *New York:*

Now, therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect

and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

HENRY LUDLAM, [L. S.]
EDW'D M. GREENWAY. [L. S.]

Sealed and delivered, and taken and acknowledged, this 6th day of Nov'r, 1854, before me,

GEO. W. MORTON,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York. } ss.

Henry Ludlam and Edward M. Greenway, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of twelve thousand dollars, over and above all his just debts and liabilities.

HENRY LUDLAM,
EDW'D M. GREENWAY.

Sworn to, this sixth day of Nov'r, A. D. 1854, before me,

GEO. W. MORTON,
U. S. Com'r.

[Endorsed.]

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U. S. DISTRICT COURT.

The STEAMSHIP ROANOKE
vs.
EZRA CALDERWOOD et al.

Bond for costs on appeal.

HENRY E. DAVIES,
Proctor.

Filed this 6th day of Nov'r, 1854.

At a special term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, held at the City Hall, in the city of New York, on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and fifty-five:

Present: The Honorable Samuel Nelson, an Associate Justice of the Supreme Court of the United States—

EZRA CALDERWOOD et al.
vs.
The STEAMSHIP ROANOKE, her tackle, &c.,

This cause coming on to be heard on the allegations and proofs, and argued by the counsel for the respective parties, and due deliberation being had: now, on motion of Messrs. Benedict, Scoville, and Benedict, proctors for the appellees, it is ordered, adjudged, and decreed, that the decree of the District Court be in all things affirmed, and that the libellants recover against the said steamship Roanoke the amount of the decree in the said District Court, with interest thereon, together with their costs in this Court to be taxed.

And it is further ordered, that Henry Ludlam and Edward M. Greenway, the stipulators for the claimants on appeal to this Court, and the New York and Virginia Steamship Company and Edward M. Greenway, the stipulators for costs and value in the Court below, pay into Court the amount of their respective stipulations; and that unless an appeal be taken within the time specified by the rules and practice of this Court, that the clerk of this Court distribute the proceeds in satisfaction of this decree.

Filed October 2, 1855.

SUPREME COURT OF THE UNITED STATES.

The STEAMSHIP ROANOKE, the New York and Virginia Steamship Company, claimants and appellants,
vs.
EZRA CALDERWOOD, Thomas C. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, and Seth Cooper, respondents.

To the honorable the Supreme Court of the United States:

The appeal of the New York and Virginia Steamship Company, claimants and appellants above named, respectfully showeth, that on or about the tenth day of January, in the year one thousand eight hundred and fifty-three, the above-named libellants exhibited their libel in the District Court of the United States for the Southern District of New York against the steamship Roanoke, her engine, tackle, &c., in a cause of collision, civil and maritime, claiming more than fifty dollars, and praying, for the reasons set forth in the said libel, that the said steamship, her engine, tackle, &c., might be condemned and sold to pay the damages in said libel alleged to have been suffered by said libellants:

That process having issued out of *of* said District Court on the said libel against the said steamship, and the said steamship having been arrested and seized by virtue of the said process, the New York and Virginia Steamship Company, the appellants herein, did, on or about the twenty-first day of February, in the year aforesaid, file their claim to the said steamship, her engine, tackle, &c., and their answer to the said libel, praying in their said answer, for the reasons therein set forth, that the said libel might be dismissed with costs to the said appellants. That a replication was duly filed to the said answer, and that such proceedings were had in the said cause, that on the tenth day of October, in the year one thousand eight hundred and fifty-four, a final decree was made and pronounced therein by the said District Court, whereby it was in substance decreed and adjudged, that the said libellants recover against the steamship aforesaid the sum of five thousand four hundred and seventy-six dollars and fifty-six dollars with costs to be taxed. And that after such final decree your petitioners duly appealed therefrom to the Circuit Court of the United States for the Southern District of New York, and the said cause was thereby removed into the said Circuit Court, and there tried anew, and that such proceedings were had therein in the said Circuit Court, that afterwards, on the twenty-ninth day of September, in the year of our Lord one thousand eight hundred and fifty-five, a final decree was made and pronounced in the said Court in the said cause, whereby it was in substance decreed and adjudged, that the said final decree of the District Court be in all things affirmed with costs, and that the said libellants have execution, and that the stipulators cause their stipulations to be fulfilled, which said decree of the said Circuit Court is, as these appellants are advised, erroneous, and ought to be reversed.

Wherefore these appellants appeal from the whole of the said decree of the said Circuit to the Supreme Court of the United States, and respectfully pray that the said decree of the said Circuit Court, and the libel, answer, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court without delay, and that the said Supreme Court will hear the said cause anew, and that the said decree of the said Circuit Court, and every part thereof, may be reversed, and a decree made dismissing said libel with costs, or such other decree as the said Supreme Court may seem just.

HENRY E. DAVIS,
Proctor for Appellants.

Dated New York, October 5th, 1855.
(Filed October 13, 1855.)

CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
For the Southern District of New York,
in the Second Circuit.

Bond for costs and damages.

Ezra Calderwood, Thomas C. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, and Seth Cooper,
vs.
The STEAMSHIP ROANOKE, her tackle, &c.

Know all men by these presents, that we, Francis Skiddy and Abraham B. Clark, are held and firmly bound unto the above-named libellants and appellees in the sum of seventy-five hundred dollars, to be paid to the said libellants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twentieth day of October, in the year of our Lord one thousand eight hundred and fifty-five.

Whereas the above-named claimants have prosecuted an appeal to the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, to reverse the decree rendered in the above-entitled suit by the Judge of the Circuit Court of the United States for the Southern District of New York:

Now therefore, the condition of this obligation is such, that if the above-named appellants shall prosecute their appeal to effect, and answer all damages and costs, if they fail to make their appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

FRANCIS SKIDDY, [L. S.]
ABRAHAM B. CLARK. [L. S.]

Sealed and delivered, and taken and acknowledged, this 20 day of Oct'r, 1855, before me.

R. E. STILWELL,
U. S. Com'r.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

Francis Skiddy and Abraham B. Clark, being severally duly sworn, doth depose and say, that they and each of them is worth

the sum of fifteen thousand dollars *dollars*, over and above all his just debts and liabilities.

FRANCIS SKIDDY.
ABRAHAM B. CLARK.

Sworn to this twentieth day of Oct., A. D. 1855, before me.
R. E. STILWELL,
U. S. Com'r.

I approve of the sufficiency of the sureties to the within bond.
CHAS. A. INGERSOLL.
Oct. 24, 1855.

[Endorsed:] Vol. Page . U. S. Circuit Court. Ezra Calderwood et als. vs. The New York and Virginia Steamship Co. Bond for costs on . Proc.
Filed this 20 day of Oct., 1855.

U. S. CIRCUIT COURT.

The STEAMSHIP ROANOKE, the New York and Virginia Steamship Company, claimants and appellants,
ads.
Ezra Calderwood et al., respondents.

It is hereby consented that the time for the appellants to perfect their appeal herein to the Supreme Court be extended to and including the 26th day of October inst.
Dated October 24th, 1855.
BENDICT, SCOVILLE, & BENEDICT.
Pro. for Lib'lts.

(Filed October 25th, 1855.)

By the honorable Samuel R. Betts, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit:

To Ezra Calderwood, Thomas C. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, and Seth Cooper, owners of the schooner Sprightley Sea, libellants:

Whereas the New York and Virginia Steamship Company, sued as John Roe, owner of steamer Roanoke, have lately appealed to the Supreme Court of the United States from a decree lately rendered in the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, made in favor of you,

the said Ezra Calderwood, Thomas C. Bartlett, Dexter Carleton, Joshua Norwood, Philander Carleton, Enos Cooper, and Seth Cooper, owner of the schooner "Sprightley Sea," libellants, against the said the New York and Virginia Steamship Company, sued as John Roe, owner of the steamer Roanoke, and have filed the security required by law, you are therefore hereby cited to appear before the said Supreme Court of the United States, at the city of Washington, on the first Monday of December, 1855, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the Southern District of New York, in the Second Circuit, this 24th day of October, 1855, and of the independence of the United States the eightieth.

Due service of the within citation on the appellees within named is admitted.

Dated October 31st, 1855.

BENEDICT, SCOVILLE, & BENEDICT.

(Filed December 3, 1855.)

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, [SEAL.] in the second circuit, do hereby certify, that the writings annexed to this certificate are true copies of their respective originals, on file, and remaining of record in my office, and that the same were used on the trial of the suit of Ezra Calderwood and others, libellants and appellees, vs. The Steamship Roanoke, the New York and Virginia Steamship Company, claimants and appellants, in the circuit court of the United States for the southern district of New York, from the decree rendered upon which trial an appeal has been taken to the Supreme Court of the United States, and that the said writings are those referred to in the return heretofore made to the said supreme court, pursuant to such appeal; and that the reason why they were not incorporated in said return was, that they were accidentally omitted.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this sixth day of December, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the said United States the eighty-first.

KENNETH G. WHITE, *Clerk.*

We consent that an order be made in the case of the Steamship Roanoke, the New York and Virginia Steamship Company, claimants and appellants, ads. Ezra Calderwood et al., libellants and appellees, amending the return therein to the supreme court in accordance with the foregoing certificate.

Dated Dec. 6th, 1856.

E. C. BENEDICT, *Pro.*

We consent that the U. S. circuit clerk make the above certificate.

BENEDICT, BURR & BENEDICT.

UNITED STATES OF AMERICA, *Southern district of New York, City, county and State of New York, ss:*

Be it remembered, that on this twenty-eighth day of June, in the year of our Lord one thousand eight hundred and fifty-three, I, George W. Morton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress, entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812, and the act of Congress, entitled "An act in addition to an act entitled 'An act for the more convenient taking of affidavits and bail in

civil causes depending in the courts of the United States,'" passed March 1st, 1817, and an act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789, did call, and cause to be and personally appear before me, at my office, at the United States courts, in the city of New York, in the said southern district of New York, in the State aforesaid, John Henson, to testify, and the truth to say, on the part and behalf of the claimants in a certain suit or matter of controversy, now depending and undetermined, in the district court of the United States for the southern district of New York, at the city of New York, in the district aforesaid, wherein Dexter Carleton and others are libellants in one suit, and Ezra Calderwood and others are libellants in the other suit, agst. the Steamship Roanoke, her tackle, &c., and the New York and Virginia Steamship Company, claimants; and the said John Henson, being about the age of thirty-four years, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy aforesaid, I did carefully examine the said John Henson, and he did thereupon depose, testify, and say as follows, viz:

That he is a seafaring man, and bound on a voyage to sea, to go more than one hundred miles from the city of New York, to sail this day. That he was wheelsman on board the Roanoke in October, 1852, and was on board and at the wheel at the time of the collision with the Sprightling Sea. I took the wheel at Norfolk, about 20 minutes before the collision took place. It was a kind of a cloudy night; once in a while you would see the stars; it was not very thick or cloudy. The wind was about S.S. west; the steamer was running northwest half-west. The steamer was running pretty much down the channel; rather more on the eastern side, if anything. The schooner was about a point on her larboard bow when I first saw her light, and I think she was rather nearer the western shore. When I first saw her light she was going up the river, but whether under full sail I cannot say. I saw the light for about a minute when I first saw it, and thought she was at anchor; the light then disappeared from me. I saw the light again in about two minutes. The schooner was then very close to us, on the larboard bow, and the pilot of the steamer, Mr. Bruff, sung out to stop the steamer, and it was done with the first bell, and immediately after ringing the first bell sung out to ring the backing bell, and it was done by his orders immediately, either by myself or Captain Elliott. They backed the boat with the engine.

After first seeing the light, until we made the schooner's light again, the schooner was kept off, I suppose, some four points, until we struck her. She had crossed over the channel from the western to the eastern shore. The steamer struck the schooner by her starboard fore-rigging. We had changed our course, before the collision, a little towards the eastern shore; that was to keep clear of the schooner as much as possible. When I first saw the schooner's light I took her to be at anchor, and if she had kept the course I supposed she was on we never would have touched her; that course would have made her head about southeast. Instead of that, when we struck her she was heading about east.

If she had kept in a southeast course she would have passed the steamer from 50 to 75 yards. Do not think the channel is over 250 yards wide, or 300.

On his cross-examination.

There was no one in the wheel-house but myself; the captain stood close by; he stood on the larboard side of the wheel-house door, and the pilot on the starboard side forward. The pilot stood so near the wheel-house that I could have reached out of the window and touched him with my hand. I first saw the schooner's light about ten minutes after got clear of Town Point. After losing sight of the light, I kept my eye in that direction, to look for it again. I shipped in the Roanoke last August as wheelsman, and have been with her ever since, with the exception of about two weeks, and am still attached to her; I joined her again last Saturday. Capt. Elliott was captain; he took Capt'n Parish's place for several trips. Capt'n Elliott was first officer when Capt'n Parish was on board. I changed the course of the steamer to the east to keep clear of the schooner. When the pilot first saw the light he asked me if I saw the light. I told him I did. I think he said it was a vessel at anchor, but am not certain; he told me to keep her a little more to the east; he told me to port the helm, to give her more room. The next words he said was hard a-port, and stop her, when he saw her. I cannot tell whether I rang the bell or Captain Elliott.

I cannot say that the steamboat had stern-way on her at the time of the blow. I obeyed all the orders the pilot gave to me. Before we changed our course we were heading about down the channel—about northwest half-west—that is about her usual course; we are sometimes a little more one side or the other; we cannot always keep directly in the middle of the channel. I did not see the schooner pass from the west to the east shore, but saw her light first to the west and then to the east shore; the last time I saw her light she was close to us. I do not know what sail the schooner had on her. After the collision the captain went over the side on a bow-line. We did not ring the bell again until we found all hands were safe; we then rang the bell to back clear of the schooner.

On further cross-examination.

When I first made the schooner's light there was ample room to have gone clear of her if she had remained in that position.

I cannot say how near we were to the eastern side of the channel at the time of the collision. The backing-bell was rung, and it is natural to suppose the wheels were backing, as they were in motion. You cannot tell whether the wheels are backing or going ahead from the wheel-house; you cannot tell, when the wheels are in motion, whether she is backing or going ahead from the motion. It was a very good light on the schooner when you could see it. When I first saw the light it appeared as if some one was holding it on deck, but you could

not tell. At the time we saw the light the steamer had not got at her full speed, as we had not let her out.

On further cross-examination.

I do not recollect of ringing any bell myself that night, until after we struck the schooner.

JOHN HENSON.

Read to and subscribed by the witness, John Henson, on his examination before me, June 28, 1853.

GEO. W. MORTON,
U. S. Comm'r.

U. S. District Court.

CALDERWOOD et al.
vs.
THE STEAMSHIP ROANOKE.

CARLETON et al.
vs.
THE SAME.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

James C. Carter, being duly sworn, deposes and says, that Geo. V. Sloat and John Henson, sailors, are witnesses in the above entitled causes on the part of the defendants; that they are now within the jurisdiction of this court, but as this deponent is informed, and verily believes, are about to depart more than one hundred miles from the same; and this deponent further says, that he is a managing clerk in the office of the proctor for the defendants, and has charge of the proceedings in the said causes.

JAMES C. CARTER.

Subscribed and sworn to before me, this 27th day of June, 1853.
GEO. W. MORTON, *U. S. Com'r.*

On the foregoing affidavit let the witnesses therein-mentioned be examined *de bene esse* before me, on the 28th inst., at 9 a. m.
GEO. W. MORTON, *U. S. Comm'r.*

Endorsed: 350 and 351—The Steamer Roanoke vs. Calderwood & Carleton—H. E. Davis for claimant—Affi't, notice and order.—June 27th, 1853.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, George W. Morton, a commissioner duly appointed by the circuit court of the United States for the southern district of New York, in the second circuit, under and by virtue of the acts of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," passed February 20th, 1812; and the act of Congress entitled "An act in addition to an

act entitled 'An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States,'" passed March 1st, 1817; and the act entitled "An act to establish the judicial courts of the United States," passed September 24th, 1789; do hereby certify, that the reason for taking the foregoing deposition is, and the fact is, the witness is material and necessary in the cause in the caption of the said deposition named, and that he is bound on a voyage to sea to go more than 100 miles from the city of New York.

I further certify, that a notification of the time and place of taking the said deposition signed by me was made out and served on the proctor of the libellant, to be present at the taking of the said deposition, and to put interrogatories, if he or they might think fit.

I further certify, that on the 28th day of June, in the year of our Lord one thousand eight hundred and fifty-three, I was attended by the proctor for the respective parties, and by the witness, who was of sound mind and lawful age, and the witness was by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth; and the deposition was by me reduced to writing in the presence of the witness, and from his statements, and after carefully reading the same to the witness, he subscribed the same in my presence. I have retained the said deposition in my possession, for the purpose of delivering the same with my own hand to the court for which the same was taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my hand and seal, this 28th day of June, in the year of our Lord one thousand eight hundred and fifty-three, and of the independence of the United States the seventy-seventh.

GEO. W. MORTON,

U. S. Commissioner duly appointed by the Circuit Court U. S. for the southern district of New York, in the second circuit.

U. S. DISTRICT COURT,
Southern District of New York.

EZRA CALDERWOOD et al.
vs.
THE OWNERS OF THE STEAMER ROANOKE.

DEXTER CARLETON et al.
vs.
THE SAME.

Deposition of Geo. V. Sloat, taken by consent of the proctors of the libellants and claimants in the causes above named, and to be read at the trial of the said causes, said Sloat being about to depart more than one hundred miles from this jurisdiction.

My name is George V. Sloat; about twenty-six years old; reside at Morrisania, in Westchester county, N. Y.; know steamer Roanoke;

have been assistant engineer about 18 months. Roanoke has been running about a year and ten months; was on board at the time of the collision that took place with the Sprightling Sea; was first assistant engineer. My duties, on the night of the collision, were to take charge of engine and boilers.

My watch was from six o'clock till one; I think had from fourteen to sixteen pounds of steam; our usual amount is 22 or 25 pounds; could not say how fast we were going. The throttle-valve about half way open. Had charge of engine and boilers at the time of the collision; suppose that something was the matter, by the stopping-bells ringing; this was the first I knew of the collision. Immediately upon the stopping-bells ringing, I stopped the engine. The backing-bell rung next, and immediately after; I immediately backed the engine. It does not take more than 8 or 10 seconds to stop the engine, after the order is given by bell, or to back her. I felt the blow of the collision. To the best of my recollection, the engine made one or two revolutions backwards.

Cross-examined.

I have been engineer about ten years; on steamers, 4 years. Wm. F. Wright was at that time chief engineer; he was, at the time, in bed; I was in the engine-room when the bell first rung. The assistant, Burmun, was with me. I used one starting-bar, and Burnum the other. We had to put the starting-bars in the socket before we used them. We unhooked the engine first, then shipped the starting-bar, then reversed her back. Unhooking closes the valves and stops the engine, and the starting-bar starts her back. I don't swear positively that the engine had made one or two revolutions back, but, to the best of my recollection at that time, I suppose 8 or 10 revolutions back would have stopped her headway. Could feel the thump plain where I was. After the first bell a few seconds elapsed before the thump. I am going to sea this afternoon.

GEO. V. SLOAT.

Sworn to this 28th day of June, 1853, before me,

CHAS. I. BUSHNELL,
Comm'r of Deeds.

We consent that the above deposition be read on the trial of the above causes, or either of them, with like effect as if regularly taken before a commissioner, subject to all legal objections.

CHS. L. BENEDICT.

June 27, 1853.

Endorsed: U. S. district court southern district of New York—Ezra Calderwood et al. vs. The Owners of the Steamer Roanoke—Dexter Carleton et al. vs. The Same.—Deposition of Geo. V. Sloat.

HENRY E. DAVIES,
66 *Wall Street.*

U. S. DISTRICT COURT,
Southern district of New York, ss:

DEXTER CARLTON et al.
vs.
THE STEAMSHIP ROANOKE, &c.

EZRA CALDERWOOD et al.
vs.
THE SAME.

William D. Reynolds, being duly sworn as a witness for the libellants in the above entitled causes, says: I reside in Norfolk, Virginia; I know the schooner Sprightling Sea and the steamer Roanoke; I remember when the Sprightling Sea was sunk by a collision with the Roanoke in November, 1852; I was then principal clerk of Mr. Williams, the agent of the schooner, and to whom the cargo of lime was consigned.

The accident was on Sunday night, and I first heard of it on Monday morning; we sent vessels down at once to raise her, and I went down myself in a day or two—about three days; I found the schooner sunk; she had not been raised or moved; she was lying, as I judge, about two hundred yards from the eastern shore; between where she lay and the shore the water is shallow; at her bow, where she was sunk, I judged the water was ten feet deep; at her stern deeper—perhaps fifteen feet deep; she was lying out of the channel and east of it.

I know the track of steamers coming down this river; I was never in the Roanoke, but frequently in others; steamers go west of where the wreck .

A steamer like the Roanoke could not go inside of the wreck with safety.

When I came to the wreck I could see her bow sticking out of the water (part of it) at low tide; I saw the jib-boom then on her; it was not injured; seemed to be in its regular place—not out of the way at all.

I saw the wreck when she was afterwards on the flats, raising her, and when she was on the ways; her cut-water was all good; no pieces knocked off, that I saw; bowsprit then on her and sound. The wound was on the starboard side, between the bowsprit and fore-rigging; it was a severe wound—a hole knocked in her almost into the windlass; the bow of the S. B. must have gone almost into the windlass. She had a full cargo of lime.

X.—I have no connection with the libellants.

It must have been between five and seven days after the accident that I went down to her; I am sure that it was not over seven days. I infer that she had not been moved since she sunk, from the looks of things; a person could draw no other inference. I have no knowledge, except from what I saw and could judge from; I was not there all the time. I have been at sea as supercargo to Porto Rico and back, and also a voyage to Boston. I have been at Norfolk on the Elizabeth river all